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U.S. Department of Homeland Security
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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



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FILE:



Office: NEW YORK, NEW YORK

Date:

JUL 07 2005

IN RE:

Applicant:



APPLICATION:

Application Certificate of Citizenship under § 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Russia on July 10, 1991. The applicant's father was also born in Russia, and he became a naturalized U.S. citizen in 1996. The applicant's mother is not a U.S. citizen, and the applicant's parents never married each other. The applicant seeks a certificate of citizenship pursuant to § 320 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1431.

The district director determined the applicant had failed to establish that he meets the definition of "child" as set forth in § 101(c) of the Act; 8 U.S.C. § 1101(c). The district director concluded that the applicant therefore did not qualify for citizenship under § 320 of the Act, and the application was denied. On appeal, the applicant's father asserts that he legitimated the applicant by executing a confirmation of paternity. The record contains no evidence, however, regarding Russian legitimation laws. The applicant has established on the other hand, that she was legitimated pursuant to New York law. She therefore meets the definition of child described in § 101(c) of the Act, and qualifies for U.S. citizenship under § 320 of the Act.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their eighteenth birthday as of February 27, 2001. The applicant was nine years old on February 27, 2001; thus, she meets the age requirement for benefits under the CCA.

Section 320 of the Act states in pertinent part that:

(a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

Section 101(c) of the Act states, in pertinent part that:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

The AAO notes that although the applicant's father asserts on appeal that he legitimated the applicant through his confirmation of paternity, the record contains no information regarding Russian or Soviet legitimation laws. Accordingly, the AAO finds that the applicant has failed to establish she was legitimated by her father under Russian or Soviet law.

According to § 4-1.2(a)(2)(C) of the New York Estates, Powers and Trusts Law (1992), in the absence of the intermarriage of the applicant's parents, the applicant may be legitimated if paternity has been established by clear and convincing evidence, and the father of the child has openly and notoriously acknowledged the child as his own. The record reflects that the applicant's father's name is recorded on the applicant's birth certificate and the applicant's father acknowledged his paternity in a Russian confirmation of paternity document. Paternity has thus been established by clear and convincing evidence.

The record contains several affidavits from the applicant's relatives attesting to the applicant's father's openly fatherly relationship with the applicant. The applicant's father filed a petition for alien relative on behalf of the applicant, and the applicant has resided with her father in New York since 2001. The record establishes that the applicant's father has openly held her out as his daughter since her birth. Accordingly, the applicant meets the requirements for legitimation as set forth in New York state law. The legitimation took place prior to the applicant's sixteenth birthday, and the applicant, who is currently thirteen years old, is unmarried.

The applicant has established that she has resided in the physical and legal custody of her father since September 2001. The AAO notes that legal custody vests "by virtue of either a natural right or a court decree". See *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970). Moreover, unless local law specifically divests the father of custody, children are presumed to be in the legal custody of both natural parents. *Matter of Rivers*, 17 I&N Dec. 419, 421 (BIA 1980). Accordingly, the applicant has established that she meets the definition of "child" for the purposes of citizenship and naturalization.

The applicant additionally established that his father became a naturalized U.S. citizen in 1996, prior to the applicant's eighteenth birthday, and that the applicant has resided in the legal and physical custody of her father, pursuant to a lawful admission for permanent residence, since September 2001. Accordingly, the applicant has established that she meets the automatic citizenship requirements set forth for under § 320 of the Act, and the appeal will be sustained.

ORDER: The appeal is sustained.